Reprint of IDEM's letter to USACOE approving Water Quality Certification for the RGP

VIA CERTIFIED MAIL

Mr. James Townsend
Chief, Regulatory Branch
Operations Division
US Army Corps of Engineers, Louisville District
PO Box 59
Louisville, KY 40201-0059

Dear Mr. Townsend:

Re: Section 401 Water Quality Certification
Project: Regional General Permits
IDEM ID#: 1999-260-00-RRJ-A
COE ID #: 199900459
State of Indiana

Office of Water Management staff have reviewed your application and Public Notice dated August 31, 1999, requesting Water Quality Certification under Section 401 of the Clean Water Act. You propose to issue two Regional General Permits (RGP's) to authorize categories of activities that are similar in nature and cause minimal individual and cumulative impacts to the aquatic environment. The proposed RGP's will replace many of the proposed and existing Nationwide Permits in Indiana. The purpose for the RGP's is to simplify and enhance the regulation of waters and wetlands in Indiana.

Based on the available information, it is the judgment of this office that the proposed RGP's will comply with the applicable provisions of 327 IAC 2 and Sections 301, 302, 303, 306, and 307 of the Clean Water Act if the individual permittees comply with the conditions set forth below. Therefore, subject to the following Special Conditions, the Indiana Department of Environmental Management (IDEM) hereby grants Section 401 Water Quality Certification for the RGP's described in your application and Public Notice dated August 31, 1999. Any changes in the RGP design or scope not detailed in the application described above are not authorized by this certification.

Section 401 Special Conditions:

1. No individual Section 401 Water Quality Certification (WQC) from IDEM is required when:

   (A) The project will impact 0.1 acre or less of wetlands[1], Special Aquatic Sites[2], or open water areas.

   (B) The project will impact 300 linear feet or less of stream channel, excluding channel relocations.

   All activities that exceed the above impact thresholds require an individual Section 401 WQC from IDEM.

2. No stream channel relocation activity is authorized under this Section 401 WQC.

3. Notification *(see Attachment 1)* shall be provided to IDEM by the permittee at least 15 working days prior to the proposed waterbody impact for all activities in which an individual Section 401 WQC is not required. **NOTE:** *A Section 401 WQC is not required when the proposed activity meets all of the terms of the Special Conditions outlined in this letter.*

4. No activity is authorized under this Section 401 Water Quality Certification unless the activity is single and complete and is not associated with additional impacts to aquatic resources, (e.g., dredging or excavating of Waters of the United States).

5. No activity is authorized under this Section 401 Water Quality Certification that is to be conducted on or in any adjacent wetland, or in any stream or ditch within a two river mile reach upstream from the tributary outlet to any of the state's waters that have been designated by the Water Pollution Control Board as: Cold Water Aquatic Community or Salmonid Waters, Outstanding State and/or National Resource Waters, and Exceptional Use Streams. *(see Attachment 2).*

6. No activity is authorized under this Section 401 Water Quality Certification where state endangered, threatened, or rare species are documented on a permanent or seasonal basis within a ½ mile radius of the proposed project site by the Indiana Natural Heritage Data Center. **NOTE:** *For projects that require only notification to IDEM* (see Special Condition #3)*, IDEM will determine if any listed species is documented within a half mile radius of the project site. In the event that a species is documented, IDEM will notify the applicant within 10 working days from the date of receipt of the permittees notice that an individual Section 401 Water Quality Certification will be required. If no response is provided by IDEM within 10 working days of the receipt of notice, an individual Section 401 Water Quality Certification is not required.*
7. No activity is authorized under this Section 401 Water Quality Certification if it is to

occur in any Critical Wetland or Critical Special Aquatic Site listed on *Attachment 3*.

8. All dredged and excavated material must be disposed of according to the requirements of 329 IAC 10, governing Solid Waste Land Disposal Facilities. All discharges of return water from disposal facilities into waters of the state are subject to Clean Water Act Section 402 NPDES requirements. All permittees must comply with all other applicable provisions of state law, including the provisions of 327 IAC 15-5 and 327 IAC 15-6.

9. IDEM will evaluate the cumulative effects of this General Permit annually. If at any time IDEM determines that the General Permit does not comply with Indiana Water Quality Standards on a cumulative basis, IDEM will revoke the Section 401 Water Quality Certification.

10. This granting of Section 401 Water Quality Certification does not relieve the permittee from the responsibility of obtaining any other permits or authorizations that may be required for this project or related activities from IDEM or any other agency or person.

11. This certification does not:
    (1) authorize impacts or activities outside the scope of these RGP's and this certification;
    (2) authorize any injury to persons or private property or invasion of other private rights, or any infringement of federal, state or local laws or regulations;
    (3) convey any property rights of any sort, or any exclusive privileges;
    (4) preempt any duty to obtain federal, state or local permits or authorizations required by law for the execution of the project or related activities; or
    (5) authorize changes in the plan design detailed in the application;
    (6) authorize impacts or activities that do not comply with the Special Conditions of this certification.

12. The permittee shall allow the commissioner or an authorized representative of the commissioner (including an authorized contractor), upon the presentation of credentials:
    (1) to enter upon the permittee's property;
    (2) to have access to and copy at reasonable times any records that must be kept under the conditions of this certification;
    (3) to inspect, at reasonable times, any monitoring or operational equipment or method; collection, treatment, pollution management or discharge facility or device; practices required by this certification; and any wetland mitigation site; and
    (4) sample or monitor any discharge of pollutants or any mitigation site.

13. Failure to comply with the terms and conditions of this Section 401 Water Quality Certification may result in enforcement action against the permittee. If an enforcement action is pursued, the permittee could be assessed up to $25,000 per day in civil penalties. The permittee may also be subject to criminal liability if it is determined that the Section

401 Water Quality Certification was violated willfully or negligently.

This certification is effective 18 days from the mailing of this notice unless a petition for review and a petition for stay of effectiveness are filed within this 18 day period. If a petition for review and a petition for stay of effectiveness are filed within this period, any part of the permit within the scope of the petition for stay is stayed for 15 days, unless or until an Environmental Law Judge further stays the permit in whole or in part.

This decision may be appealed in accordance with IC 4-21.5, the Administrative Orders and Procedures Act. The steps that must be followed to qualify for review are:

1. You must petition for review in a writing that states facts demonstrating that you are either the person to whom this decision is directed, a person who is aggrieved or adversely affected by the decision, or a person entitled to review under any law.

2. You must file the petition for review with the Office of Environmental Adjudication (OEA) at the following address:

   Office of Environmental Adjudication
   ISTA Building
   150 West Market Street
   Suite 618
   Indianapolis, IN 46204

3. You must file the petition within eighteen (18) days of the mailing date of this decision. If the eighteenth day falls on a Saturday, Sunday, legal holiday, or other day that the OEA offices are closed during regular business hours, you may file the petition the next day that the OEA offices are open during regular business hours. The petition is deemed filed on the earliest of the following dates: the date it is personally delivered to OEA; the date that the envelope containing the petition is postmarked if it is mailed by United States mail; or, the date it is shown to have been deposited with a private carrier on the private carrier's receipt, if sent by private carrier.

Identifying the permit, decision, or other order for which you seek review by number, name of the applicant, location, or date of this notice will expedite review of the petition.

Note that if a petition for review is granted pursuant to IC 4-21.5-3-7, the petitioner will, and any other person may, obtain notice of any prehearing conferences, preliminary hearings, hearings, stays, and any orders disposing of the proceedings by requesting copies of such notices from OEA.

If you have any questions about this certification, please contact Mr. Randy Jones, Project Manager, of my staff at 317/233-2473, or you may contact the Office of Water Management

through the IDEM Environmental Helpline (1-800-451-6027).

If you have procedural questions regarding filing a petition for review you may contact OEA at 317-232-8591.

Sincerely,

ORIGINAL SIGNED

Matthew C. Rueff
Assistant Commissioner
Office of Water Management

Attachments

cc: Mr. Gary Mannesto, COE- Detroit District
Mr. Scott Pruitt, USFWS- Bloomington
Ms. Cathy Garra, USEPA- Region 5
Mr. Robert Eddleman, NRCS
Mr. Larry Macklin, IDNR

[1] defined at 33 CFR 328.3(b)
[2] defined at 40 CFR 230.3(q-1)

(Attachment 2)

Indiana Waters Designated for Special Protection

Designated Salmonid Waters:

1. Trail Creek & tributaries upstream of US Highway 35.
2. East Branch of the Little Calumet River and its tributaries downstream to Lake Michigan via Burns Ditch.
3. Kintzele Ditch (Black Ditch) from Beverly Drive downstream to Lake Michigan.
4. Salt Creek above its confluence with the Little Calumet River.
5. Galena River and its tributaries in Laporte County.
6. The St. Joseph River and its tributaries in St. Joseph County from the Twin Branch Dam in Mishawaka downstream to the Indiana/Michigan state line.

Waterbodies which have been designated all or partially as Outstanding State Resource Waters:

1. The Blue River in Washington, Crawford, and Harrison counties.
2. Cedar Creek in Allen and DeKalb counties.
3. The North Fork of Wildcat Creek in Carroll and Tippecanoe counties.
4. The South Fork of Wildcat Creek in Tippecanoe County.
5. The Indiana portion of Lake Michigan.
6. All waters incorporated in the Indiana Dunes National Lakeshore.

Streams which have designated all or partially as Exceptional Use Streams:

1. Big Pine Creek in Warren County.
2. Mud Pine Creek in Warren County.
3. Fall Creek in Warren County.
4. Indian Creek in Montgomery County.
5. Clifty Creek in Montgomery County.
6. Bear Creek in Fountain County.
7. Rattlesnake Creek in Fountain County.
8. The small tributary to Bear Creek in Fountain County within the Portalnd Arch Nature Preserve which enters Bear Creek at the sharpest bend and has formed the small natural bridge called Portland Arch.
9. Blue River from the confluence of the West Middle Forks of the Blue River in Washington County.
10. The South Fork of the Blue River in Washington County.
11. Lost River and all surface and underground tributaries upstream from the Orangeville Rise (T2N, R1W, Section 6) and the Rise of Lost River (t2N, R1W, Section 7) and the mainstream of the Lost River from Orangeville Rise downstream to its confluence with the East Fork of the White River.

(Attachment 3)

Critical Wetlands and Critical Special Aquatic Sites

1. Bogs- including Acid Bogs and Circumneutral Bogs
2. Cypress Swamps
3. Dune & Swales
4. Fens
5. Flats- including Muck and Sand
6. Sinkhole ponds
7. Sinkhole swamps

DEFINITIONS:

(1) **"Acid bogs"** have the following characteristics:

(A) Morphology: glacial moraine ice-block depressions or "kettles," rarely in unglaciated areas

(B) Hydrology: non-flowing or very slow flowing water, saturated, seasonal water level fluctuations

(C) Water chemistry: low pH (acidic)

(D) Nutrient availability: low

(E) Substrate: sphagnum peat or other low nutrient organic substrates, may rise or fall with seasonal water level fluctuations

(F) Indicator species: bog rosemary (*Andromeda glaucophylla*), dragon's mouth (*Arethusa bulbosa*), screwstem *(Bartonia virginica),* dwarf birch (*Betula pumila*), grass pink (*Calopogon tuberosus*), hair star sedge (*Carex atlantica capillacea*), gray bog sedge (*Carex canescens*), cordroot sedge (*Carex chordorrhiza*), two-seeded sedge (*Carex disperma*), large-fruited star sedge (*Carex echinata*), muck sedge (*Carex limosa*), running bog sedge (*Carex oligosperma*), few-flowered bog sedge (*Carex pauciflora*), three-seeded bog sedge (*Carex trisperma*), leatherleaf (*Chamaedaphne calyculata angustifolia*), moccasin flower (*Cypripedium acaule*), narrow-leaved sundew (*Drosera intermedia*), round-leaved sundew (*Drosera rotundifolia*), bog spike rush *(Eleocharis robbinsii),* slender cotton grass (*Eriophorum gracile*), dense cotton grass (*Eriophorum spissum*), rusty cotton grass (*Eriophorum virginicum*), yellow avens *(Geum aleppicum),* white fringed orchid (*Habenaria blephariglottis*), orange fringed orchid (*Habenaria ciliaris*), marsh St. John's wort (*Hypericum virginicum*), tamarack (*Larix laricina*), mountain holly (*Nemopanthus mucronata*), snake-mouth orchid (*Pogonia ophioglossoides*), poison sumac (*Rhus vernix*), white beak rush (*Rhynchospora alba*), silky willow (*Salix sericea*), pitcher plant (*Sarracenia purpurea*), arrow grass (*Scheuchzeria palustris americana*), Smith's tufted bulrush *(Scirpus smithii),* hardhack (*Spiraea tomentosa rosea*), bog bladderwort (*Utricularia geminiscapa*), highbush blueberry *(Vaccinium corymbosum),* large cranberry (*Vaccinium macrocarpon*), small cranberry (*Vaccinium oxycoccus*), smooth white

violet (*Viola pallens*), or Virginia chain fern (*Woodwardia virginica*).

(2) **"Bog"** means a classification of wetlands that includes acid bogs and circumneutral bogs.

(4) "Circumneutral bogs" have the following characteristics:

(A) Morphology: glacial moraine ice-block depressions or "kettles," rarely in unglaciated areas

(B) Hydrology: groundwater inputs create a minerotrphic head of water. Non-flowing or very slow flowing water, saturated, seasonal water level fluctuations

(C) Water chemistry: circumneutral to slightly acidic (low pH). Deep rooted vegetation may be exposed to the alkaline or circumneutral minerotrophic groundwater while shallow roots inhabit more acidic layers of the peat substrate.

(D) Nutrient availability: low

(E) Substrate: sphagnum peat or other low nutrient organic substrates, may rise or fall with seasonal water level fluctuations

(F) Indicator species: green bog sedge *(Carex brunnescens),* bog panicled sedge *(Carex diandra),* narrow-leaved wooly sedge *(Carex lasiocarpa americana),* slender sedge *(Carex leptalea),* tamarack *(Larix laricina),* buckbean *(Menyanthes trifoliata minor),* Northern panic grass *(Panicum boreale),* marsh cinquefoil *(Potentilla palustris),* poison sumac *(Rhus vernix),* white beak rush *(Rhynchospora alba),* Northern gooseberry *(Ribes hirtellum),* bog willow *(Salix pedicellaris hypoglauca),* pitcher plant *(Sarracenia purpurea),* flat-leaved bladderwort *(Utricularia intermedia),* small bladderwort *(Utricularia minor),* or highbush blueberry *(Vaccinium corymbosum).*

(3) **"Cypress swamps"** have the following characteristics:

(A) Morphology: depressions and sloughs associated with the Wabash and Ohio Rivers and their major tributaries.

(B) Hydrology: seasonally to permanently saturated or ponded.

(C) Water chemistry: indistinct

(D) Nutrient availability: indistinct

(E) Substrate: very poorly drained and aerated soils usually not peat

(F) Indicator species: white milkweed (*Asclepias perennis*), water hickory *(Carya aquatica),* water locust (*Gleditsia aquatica*), featherfoil (*Hottonia inflata*), climbing hempweed (*Mikania scandens*), swamp cottonwood *(Populus heterophylia),* swamp tupelo *(Nyssa aquatica),* American storax (*Styrax americana*), or bald cypress (*Taxodium distichum*).

(4) **"Dune and swales"** have the following characteristics:

(A) Morphology: sand dunes divided by low-lying areas referred to as swales. Found adjacent to or near Lake Michigan. Within the swale areas wet prairies, pannes, and coastal remnant communities may be found.

(B) Hydrology: groundwater driven

(C) Water chemistry: alkaline, carbonate rich

(D) Nutrient availability: indistinct
(E) Substrate: wet calcareous sand
(F) Indicator species: pale false foxglove *(Agalinis skinneriana),* sea rocket *(Cakile edentula),* golden sedge *(Carex aurea),* prairie gray sedge *(Carex conoidea),* early fen sedge *(Carex crawei),* large yellow sedge *(Carex flava),* false golden sedge *(Carex garberi),* green yellow sedge *(Carex viridula),* Indian paintbrush *(Castilleja coccinea),* dune thistle *(Cirsium pitcheri,* twig rush *(Cladium mariscoides),* small yellow lady's slipper *(Cypripedium calceolus parviflorum),* wrinkle-sheathed spike *(Eleocharis olivacea),* seaside spurge *(Euphorbia polygonifolia),* fringed gentian *(Gentiana crinita),* false heather *(Hudsonia tomentosa),* Kalm's St. John's wort *(Hypericum kalmianum),* beach pea *(Lathyrus japonicus glaber),* Northern panic grass *(Panicum boreale),* jack pine *(Pinus banksiana),* jointweed *(Polygonelia articulate),* rose gentian *(Sabatia angularis), dune willow (Salix syrticola),* tall nut rush *(Scleria trigiomerata),* sand club moss *(Selaginella rupestris),* dune goldenrod *(Solidago racemosa gillmanii),* common bog arrow grass *(Triglochin maritima),* horned bladderwort *(Utricularia cornuta),* humped bladderwort *(Utricularia gibba),* or hair bladderwort *(Utricularia subulata).*

(5) **"Fens"** have the following characteristics:
(A) Morphology: occurs where water travels through carbinate rich formations and discharges forming a wetland. Generally located near glacial formations such as kames, eskers, or moraines. But also may occur near river bluffs or dunes and in flats associated with the above formations.
(B) Hydrology: fed by mineotrophic groundwater. Non-flowing or very slowly flowing water which fluctuates seasonally.
(C) Water chemestry: alkaline, rich in carbonates (i.e. calcium carbonates or magnesium carbonates)
(D) Nutrient availability: high mineral content, low nutirient content.
(E) Substrate: marl, peat, or muck
(F) Indicator species: lake cress *(Armoracia aquatica),* rush aster *(Aster borealis),* lower water parsnip *(Berula erecta),* dwarf birch *(Betula pumila),* marsh bellflower *(Campanula uliginosa),* prairie star sedge *(Carex interior),* large yellow sedge *(Carex flava),* fen panicled sedge *(Carex prairea),* fen star sedge *(Carex sterilis),* Mead's stiff sedge *(Carex meadii),* swamp thistle *(Cirsium muticum),* twig rush *(Cladium mariscoides),* hemlock parsley *(Conioselinum chinense),* white lady's slipper *(Cypripedium candidum),* wicket spike rush *(Eleocharis rostellata),* narrow-leaved cotton grass *(Eriophorum angustifolium),* queen of the prairie *(Filipendula rubra),* black ash *(Fraxinus nigra),* rough bedstraw *(Galium asprellum),* small fringed gentian *(Gentiana procera),* northern bog orchid *(Habenaria hyperborea huronensis),* bog lobelia *(Lobelia kalmii),* narrow-leaved loosestrife *(Lysimachia quadriflora),* marsh wild timothy *(Muhlenbergia glomerata),* grass of parnassus *(Parnassia glauca),* fen betony *(Pedicularis lanceolata),* sweet william phlox *(Phlox maculata),* snake-mouth orchid *(Pogonia*

ophioglossoides), shrubby cinquefoil *(Potentilla fruticosa),* alder buckthorn *(Rhamnus alnifolia),* lance-leaved buckthorn *(Rhamnus lanceolata),* white beak rush *(Rhynchospora alba),* hair beak rush *(Rhynchospora capillacea),* northern gooseberry *(Ribes hirtellum),* sage willow *(Salix candida),* low calamint *(Satureja arkansana),* swamp saxifrage *(Saxifraga pensylvanica),* low nut rush *(Scleria verticillata),* marsh club moss *(Selaginella apoda),* Ohio goldenrod *(Solidago ohioensis),* swamp goldenrod *(Solidago patula),* bog goldenrod *(Solidago uliginosa),* eastern white cedar *(Thuja occidentalis),* false asphodel *(Tofieldia glutinosa),* slender bog arrow grass *(Triglochin palustris),* rock elm *(Ulmus thomasii),* flat-leaved bladderwort *(Utricularia intermedia),* small bladderwort*(Utricularia minor),* common valerian *(Valeriana ciliata),* bog valerian *(Valeriana uliginosa),* or American brooklime*(Veronica americana).*

(6) **"Flats (muck and sand)"** have the following characteristics:

(A) Morphology: found at the margins of lakes or covering shallow basins

(B) Hydrology: water level of basin fluctuates during a season of from year to year in response to the amount of precipitation. Muck flats may float on the water surface but are usually inundated during high water periods and exposed periodically.

(C) Water chemistry: indistinct

(D) Nutrient availability: indistinct

(E) Substrate: sand, or peat

(F) Indicator species: beach three-awn grass *(Aristida tuberculosa),* stiff aster (*Aster ptarmicoides*), sea rocket *(Cakile edentula),* winged oval sedge *(Carex alata),* twig rush *(Cladium mariscoides),* black-fruited spike *(Eleocharis melanocarpa),* wrinkle-sheathed spike *(Eleocharis olivacea),* bog spike rush *(Eleocharis robbinsii),* pipewort *(Eriocaulon septangulare),* autumn sedge *(Fimbristylis autumnalis),* chestnut sedge *(Fimbristylis puberula),* umbrella sedge *(Fuirena pumila),* water pennywort *(Hydrocotyle umbellate),* brown-fruited rush *(Juncus pelocarpus),* round-headed rush *(Juncus scirpoides),* southern yellow flax *(Linum intercursum),* stiff yellow flax *(Linum striatum),* sessile water horehound *(Lycopus amplectens),* sand panic grass *(Panicum spretum),* warty panic grass *(Panicum verrucosum),* cross milkwort *(Polygala cruciata aquilonia),* Carey's heartsease *(Polygonum careyi),* long-beaked bald rush *(Psilocarya scirpoides),* meadow beauty *(Rhexia virginica),* grass beak rush *(Rhynchospora globularis recognita),* horned beak rush *(Rhynchospora macrostachya),* Pursh's tufted bulrush *(Scirpus purshianus),* Smith's tufted bulrush *(Scirpus smithii),* netted nut rush *(Scleria reticularis),* Ohio goldenrod *(Solidago ohioensis),* slender-leaved goldenrod *(Solidago tenuifolia),* hyssop hedge nettle *(Stachys hyssopifolia),* floating bladderwort *(Utricularia inflata minor),* tall yellow-eyed grass *(Xyris difformis),* or yellow-eyed grass *(Xyris torta).*

(7) **"Marl beaches"** have the following characteristics:

(A) Morphology: shorelines of lakes in northeastern Indiana
(B) Hydrology: shallowly inundated in the spring, dry during the summer
(C) Water chemistry: alkaline
(D) Nutrient availability: indistinct
(E) Substrate: marl
(F) Indicator species: fen star sedge (*Carex sterilis*), twig rush *(Cladium mariscoides),* golden-seeded spike rush *(Eleocharis elliptica),* wicket spike rush *(Eleocharis rostellata),* short-headed rush *(Juncus brachycephalus),* wiry panic grass *(Panicum flexile),* hair beak-rush *(Rhynchospora capillacea),* slender bog arrow grass *(Triglochin palustris),* or flat-leaved bladderwort *(Utricularia intermedia).*

(8) **"Sinkhole ponds"** have the following characteristics:
(A) Morphology: depressions formed by chemical and physical weathering of the underlying limestone. Found in the karst region of southern Indiana.
(B) Hydrology: Permanently inundated or saturated, dry only in drought years
(C) Water chemistry: Alkaline to circumneutral
(D) Nutrient availability: Indistinct
(E) Substrate: Indistinct
(F) Indicator species: *Glyceria acutiflora* or *Carex decomposita*. Absense of these species does not conclusively exclude an area from the sinkhole pond classification.

(9) **"Sinkhole swamps"** have the following characteristics:
(A) Morphology: depressions formed by chemical and physical weathering of the underlying limestone. Found in the karst region of southern Indiana.
(B) Hydrology: Permanently inundated or saturated, dry only in drought years
(C) Water chemistry: Alkaline to circumneutral
(D) Nutrient availability: Indistinct
(E) Substrate: Indistinct
(F) Indicator species: *Rhynchospora corniculata, Carex decomposita, Carex gigantea, Itea virginica, Ranunculus pusillus,* or *Woodwardia areolata*